K 1952. File No. O Leg/5.

P 32E

Legal Deptt

A BRANCH

Subject:— Opinions under the Land Acquisition Act, 1894

File No. O Leg/52

Gen. 194 e.

CONTENTS.

Legal Department File No. GH.162/58.

Sr. No.	L.L./G.No.	Subject	Pages.
		Opinions under the Land Acquisition Act, 1894.	
1.	2045 9-2-1959	Whether the Nagra Educational Society can be legally compelled to pay the difference between present market price and occupancy price already received etc. etc.	1-5.
2.	1150 25-1-59	Until an award is made by the Collector, land does not vest absolutely in Government free from all encumbrances.	5-8.
3.	2706 19-2-59	Reg. acquisition of the house known as Nani Bhuvan at Laburnum Road, Gandevi for locating International House for accommodating tourists from foreign countries.	9-12.
4.	2774 20-2-59	Whether it would be possible to recover from the Society the valuation of the land in case the same is enhanced in the reference before the District Judge.	13-16.
5.	4277 25-3-59	Whether and how far Government can give to the Leg Officer instructions of a general or mmkx special nature in the matter of quantum or apportionment of compensation is likely to be conveyed in Courts.	17-18.
6.	6468 15-4-59	Section 48(1). The withdrawal of proceedings of whole holding belonging to the same owner — re question of piecemeal withdrawal.	19.
7.	10735 25-6-59	The awarding land in exchange to Taljabhai Dheribhai —— order not in accordance with the provisions of section 35(6) of Baroda L.A. Act.	21.
8.	2788 13-6-59	The demarcating the passage leading through the Mahomedan Cemetery for the Hindu Burial Ground on the Queens Road.	22-25.
9.	12773 1-8-59	Whether the expression "award" in section 11 of the Act includes the grounds of the award.	26-27.
10.	14876 1-9-59	Re: Patel Co-operative Housing Society Ltd., Mahuda, Kaira 15 percent Solatium for compulsory acquisition is not to be paid by the Society-C-Chairman's Contention ——	28-29.
11.	14886/A 15-9-59	Re: acquisition of the Servant Quarters for the Ahmedabad Municipal Corporation which already vest in it as now proposed would not be feasible and would also serve no	30.

26.7

7/9/26

12.	16186/A 1-10-52	Re: The Selsette Estates. It would be expedient to drop from the notification only such of the lands which undoubtedly fall under section 4 as such Land would not be required to be sequired.	45.
13.	13826 23-8-52	Re: The claim of the Khoti on account of the loss of assessment should in fact have been included in the total amount of compensation included in the award.	47-49.
14.	16734/A 10-10-52	There would be no objection to the Land Acquisition Officer making a separate supplementary award in respect of the Khots' award.	51-52.
15.	17277/A 28-10-52	Re: Creation of residental flats Diversion to and for public purpose---permissible.	53.
16.	16979/A 14-11-52	The selsette Estates lands found to vest in Government should now be withdrawn from sequisition under section 48(1).	56.
17.	21288/A 29-12-52	The payment of Compensation to Khot under supplementary award.	57.

SVV
16.6.56.
4 c.

~~RECOMMENDATION/REPLY~~

Legal Department.

The following questions are referred to R.L.A. for advice :

(1) Whether the Wagra Educational Society can be legallyx compelled to pay the difference between the present market price and the occupancy price already recovered;

(2) Whether the said Society can be compelled to perform its part o. the agreement and if so by what method; and

(3) Whether if the lands are proposed to be acquired, the society can be awarded a reduced compensation in view of the fact that the land was granted at a concessional rate.

2. As regards the first question attention is invited to R.L.A.'s opinion No. 9145, dated the 3rdx July 1950. The R.L.A. has held that there is no objection to withdrawing the concession to levying full occupancy price and rent. As regards the second question, it is now settled that subject to certain exceptions, the court will not specifically enforce contracts to build or repair, both because specific performance is decreed only when the party wants the thing in specie; and cannot have it in any otherway and because such contracts are for the most part so uncertain that the court would be unable thx to enforce its own judgment. It may be possible to bring the present case within the exceptional class of cases, but in view of the insufficiency of the documentary evidence, a suit would not be advisable.

3. The third question for consideration is whether a reduced compensation can be awarded to the Society if the lands are to be acquired under the Land Acquisition Act. In determining the compensation the market value of the land at the date of the publication of the notice is to be taken into consideration. (Vide section 23 of the Land

SVV
16.6.656.

Acquisition Act). It will, therefore, be difficult to pin down the Society to the price it paid to Government. However, if it is decided to acquire the land, the best course would be to instruct the Land Acquisition Officer to fix the compensation taking into consideration the actual price paid by the Society to Government and to leave the Society, if it is not satisfied with the amount, to approach the Court under section 18 of the Land Acquisiton Act. A similar point has arisen in the acquisition of Survey No. 186 of Kochrebond the same is under consideration of Shri C.K.Daphtary, Solicitor General of India. His advice in that case may be awaited.

Sd./-
S/2
Additional Secretary to Government.

U.R. to R.D., No. 2066; dated the 9th February, 1952.

AVV
16.6.56.
4 c.

Legal Department.

The view taken by the Revenue Department is correct.

2. Until an award is made by the Collector under section 11 of the Land Acquisition Act, 1894, the land does not vest absolutely in Government free from all encumbrances (see section 16). As the acquisition proceedings have not yet been completed and no award has been passed by the Collector, the land cannot be deemed to have vested in Government.

3. When land is acquired under the Land Acquisition Act, 1894, for a specific purpose, it is not open to the authorities to use it for quite a different purpose (see Gurudas vs. Secretary of State, 18 Calcutta Law Journal 244), but their Lordships of the Privy Council have held that it may be used for another legal purpose so long as no nuisance is created (See Lachmeshwar v. Chairman, Darbhanga Municipality, I.L.R. 18 Calcutta 99). It has been also held that land acquired for one purpose may be used for other authorised purposes (See Secretary of State vs. Amulya Charan A.I.R. 1937 Calcutta 874). This means that when once the land is acquired for a public purpose, the authority for whom the land is acquired may use it for that specific purpose or for any other authorised purpose. In other words, it means that if for instance a municipality has acquired the land for any other purpose authorised by the provisions of the Municipality Act, in case that land is not required for that specific purpose. In the present case the land is proposed to be acquired for constructing buildings required for the activities of the Rashtriya Shikshan Mandal and the Mandal proposes to dispose of five acres of that land to the Poona Municipality in exchange for two acres and 15 gunthas on payment of such compensation

SVV
16.6.56.

in respect of the rest of the land as the Mandal would be required to pay for acquisition. Obviously, the exchange and disposal of the land by the Mandal would not be for an authorised purpose. Consequently, the proposal made by Dr. Lagu on behalf of the Rashtriya Shikshan Mandal would not be legally feasible.

Sd/-
Deputy Secretary to Government.

U.R. to R.D., No. 1130; dated the 25th January, 1956

SVV
16.6.56.
4 c.

The proposal was once considered regarding the acquisition of the house known as Mani Bhavan at Laburnum Road, Gamdevi where Mahatma Gandhi stayed from 1936-1952 under the Land Acquisition Act, 1934, for locating International House for accommodating tourists from foreign countries. The said proposal was dropped. The question was also considered for acquiring the house for Shri Gandhiji Memorial at the cost of the Government of Bombay. That proposal also fell through. It is now proposed that the house may be acquired for the Gandhi Memorial Trust Fund under the Land Acquisition Act, 1894. In his letter dated 6th February, 1952 Hon'ble Shri Mavlankar states :

" I asked the Solicitors to investigate the title and I am advised by them that though there may be no difficulty on practical grounds they will not be able to certify a marketable title in ... in view of the shortcomings of a technical nature ..... They therefore strongly recommend and advised that resort should be had to the procedure of acquisition under the Land Acquisition Act. "

2. The ground on which recourse to the Land Acquisition Act, 1894 is suggested is that the Trust Fund should get a clear and marketable title to the property. It is true that the Gandhi Memorial Trust Fund is a public charitable trust. A declaration under section 6 of the Land Acquisition Act, 1894 no doubt being legal, if conditions laid down in the section are fulfilled. The proviso to sub-section (1) of section 6 expressly provides that no declaration under the section can be made unless the compensation to be awarded is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority. It is clear from the letter of Shri Mavlankar referred

SVV
16.6.56.

to above that the whole of the purchase money i.e., the entire amount of Rs. 1,40,000/- would be paid by the Gandhi Memorial Trust Fund (Smarak nidhi) and would be deposited with Government. It is not proposed that the compensation or any part thereof should be paid out of the public revenues or that the acquisition should be by Government itself. The Gandhi Memorial Fund is not a fund controlled by a local authority. The Fund is not a company registered under the Indian Companies Act or incorporated by a charter or any other law. But the expression company as defined in section 3 of the Land Acquisition Act, 1894 includes a society registered under the Societies Registration Act of 1860. If the trust has been registered as a Society under the Act of 1860, it would be possible to acquire the property under the Land Acquisition Act. The letter of Mavlankar is not clear. But this point can be cleared up from the Solicitors Messrs. Manilal Kher and Ambalal & Co. who are dealing with the matter.

3. Another point which will have to be verified from the Solicitors of the Gandhi Memorial Trust Fund is the ground stated in Shri Mavlankar's letter for having recourse to the provisions of the Land Acquisition Act, 1894. In Lachmiswar Singh v. Chairman, Darbhanga Municipality (I. L. R. 18 Cal. 99), the Privy Council observed that if the provisions of the Land Acquisition Act are made a cloak for attempting to obtain transfer of an indefeasible title, the proceedings do not operate towards the creation of a valid title to the land in Government. In the present case it is no doubt true that the owner of Mani Bhavan has not agreed to sell the house to the Trust. But the circumstance in which his title to the house is not marketable has not been explained in Shri Mavalankar's letter and it will have to be ascertained from the Solicitors of the Trust how far

SVV

and to what extent the decision of the Privy Council would or would not apply to the present case.

4. For the above reasons, I would suggest that Secretary, Revenue Department should arrange for an interview with the Solicitors for the clarification of the above points.

Sd/-
19/2
Additional Secretary to Government.

U.R. to R.D., No. 2706; dated the 19th February, 1959.

SRV
16.6.56.
4 c.

8515/15-8-52.

Submitted with reference to R.D. note at page 15 ante. It appears that land bearing survey No. 251A/1 of Jalgaon has been acquired for the Jalgaon Co-operative Housing Society Ltd.; and the Collector has passed an award granting compensation amounting to Rs. 1,90,000/-. Shri M.M.Gadgil on behalf of Messrs. Mulji Jeth & Co., (Owners) has raised a contention that the lands are of the value of about Rs. 7,00,000/-. The possession of the land has not been taken over but a notice had been served on the owner to hand over possession on 14th January 1952. When Shri Gadgil made a petition to Government praying for the stay of that order, Government by their telegram dated the 12th January asked the Collector to stay handing over possession of the land to the Society. In his petition Shri Gadgil offered in lieu of his request for stay that he was prepared to pay to the Society interest at 3½ percent from the date of the award till the date of the District Judge's award; and to give up his claim to any interest for the interim period or to claim compensation under section 48(2) of the Land Acquisition Act if the land acquisition proceedings are withdrawn. The Society on the other hand is pressing for possession of the land. It appears from the Collector's letter dated the 8th February 1952 that Shri Gadgil has not deposited the amount of interest as proposed in his letter referred to above. In the last paragraph of his note at pp. 11-12 ante the Consulting Surveyor proposes that the arrangement about the deposit of the amount of interest etc., proposed by Shri Gadgil need not be accepted by Government as he fears that such a course might involve Government in complications. So far as the taking possession of the Land and handing the same over to the Society is concerned the question for consideration before the R.D. appears to be whether as suggested in

SVV

Shri Gadgil's application it would be possible to recover from the Society the valuation of the land in case the same is enhanced in the reference before the District Judge. But as regards this Consulting Surveyor appears to be sure that the valuation of Rs. 1,80,000/- (which was his own estimate) is not likely to be exceeded. In these circumstances the R.D. sees no point in continuing the stay order and proposes to vacate the same. The papers are shown to the R.L.A. before the stay order is vacated.

In the circumstances stated by R.D. there appears no objection to Government vacating the stay order.

Sd./-
19/2
Remembrancer of Legal Affairs.

U.R. to R.D., No. 2776; dated the 20th February, 1959.

SVV
16.6.56.
4 e.

Office of the R.L.A.

The whole question as to whether and how far Government can give to the Land Acquisition Officer instructions of a general or special nature in the matter of quantum or apportionment of compensation is likely to be canvassed in Courts. Instructions intended for this type of cases should be so worded as not to give rise to the complaint that Government fettered the discretion which vested in the Acquisition Officer. R.D. may, therefore, prepare a suitable draft and get it approved by L.D.

Sd./-
28/4
Remembrancer of Legal Af

U.R. to R.D., No. 6577; dated the 28th April, 1952.

SVV
16.6.56.
4 c.

Legal Department.

Land Acquisition Act, 1894.- Section 48(1)

withdrawal of proceedings of whole holding

Though there was a single declaration and common award made on 18th December, 1948 it was in respect of both the S. Nos. 155 and 156/1 and 2, which are seperate holdings belonging to different owners. As it is proposed to withdraw from the acquisition of the whole holding bearing S.No. 156/1 and 2 belonging to the same owner, there will be no question of piecemeal withdrawal.

Under section 48(1) of the Land Acquisition Act, 1894, except in the case provided in section 36, the Government shall be at liberty to withdraw from the acquisition of anyxx land of which possession has not been taken. Since possession of S. No 156/1-2 has not been taken over by Government withdrawing from the acquisition of land in question. However, under section 48(2), the owner concerned would be entitled to claim compensation for the damage suffered in consequence of the acquisition proceedings and also the costs incurred for the acquisition proceedings.

Sd./-
19/4
Additional Secretary to Government.

U.R. to R.D., No. 5466; dated the 12th April 1956.

SVV
16.6.56.
4 c.

Office of the P.L.A.

The order dated 24.8.1948 passed by the Survey Settlement Commissioner, Baroda, awarding land comprising S.Nos. 1005 - 1007 in exchange to Taljabhai Dhoribhai was within the authority of thatm officer. It must, however, be pointed out that this ordeyis not in accordance with the provisions of section 35(6)of the ~~xxxxxxxxxxxxxxxxxx~~ Baroda Land Acquisitéon Act and rule 19(1) of the Baroda Land Acquisition Act ~~xxx~~ which permit award of land in lieu of money only in a case where the land acquired was of limited ownership, as e.g., service land, Devashan land, etc. The land acquired from Taljabhai Dhoribhai does not seem to be a land in which Taljabhai has limited interest, and, therefore, Taljabhai was entitled to compensation in money only. However, the order awarding land in exchange has been fully carried out, and there is no power now in this Government either under the Baroda Act or under the Land Acquisition Act to re-open the award already made.

2. Moreover, the grievance of Patel Shambhai Ishwarbhai is not that land was awarded in exchange in contravention of~~xx~~ the law, but that the land which was so awarded should not have been awarded but should have been re-sold to him if it were no longer required for a public purpose for which it was originally acquired. That is a separate contention altogether. It would be open to Patel Shambhai Ishwarbhai to pursue his legal remedy in a court of law, if he feels aggrieved in that behalf.

Sd./-
27/6
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10755, dated the 28th June 1952.

SVV
16.6.56.
4 c.

Legal Department.

Statement of the Case.

Joint Honorary Secretaries of the Bombay Hindu Burning and Burial Grounds Committee petitioned to Government in 1938 complaining that the passage leading through the Mahammadan Cemetry for the Hindu Burial Ground on the Cheena Road, which was originally 20 feet wide is now from 10 to 3 feet wide only as a result of Muhammadan bodies having been take up the work of demarcating the passage once for all so as to avoid trouble in future.

The Collector of Bombay has forwarded plan showing as it existed in 1855 and 1857. The width of the passage as shown in the first two plans is about 20 feet. He also forwarded a plan prepared in January 1939 which shows that the passage varies in width from 3 feet to 12 feet. The passage seems to be in existence before the year 1827 (p. 3 ante). He states that there are no records to show the ownership of the passage. Both the Collector and the Municipal Commissioner agree that there is no documentary evidence to show that the passage belongs to Government.

The authorities of the Muhammadan Cemetry say that the passage is being used under leave and license granted by them to Hindu funeral parties but the Municipal Commissioner states that they have not been able to produce any document in proof of their statement. The authorities of the Hindu Cemetry on the other hand contend that the passage is being used by the public since last hundred years or so as could be seen from Dickinson's survey plan of 1827.

The Municipal Commissioner states further that as the passage is shown on all survey she t since 1827 it can be treated as a street under section 3(w) of the Bombay Municipal Corporation Act, 1888 but as it is a private street under section 3(y) the Municipality can

SVV

16.6.39.

take action under section 305 against the owners to carry out the necessary work. He further points out that the Municipality had taken steps to light the ~~xx~~ passage in 1914 and 1934 but the Muhammedans objected to the same on religious grounds and the Corporation did not proceed further in order to avoid a breach of the peace. He therefore stated tht unless Government undertake to give the necessary protection nothing can be done by the Municipality to improve the condition of the street.

The whole question was kept in cold storage and it was reopened in 1949 when it was decided that a meeting of the Trustees of the Cemetry and the Representatives of the Hindu Burial Ground should be called for by Government. At the meeting the representatives provided to explore the possibilities of a compromise.

On the 23rd January 1950, Captain and Vaidya, Solicitors on behalf of the Mushavirs (Directors) of the Jumma Musjid of Bombay and the Mushavir Burial Ground pointed out that their clients are administering the Jumma Masjid Trust under a revised scheme framed by High Court of Bombay, on 14th July 1947 and that they are advised by the Advocate General that Mushavirs have not in law authority to grant an extended right of way involving the removal wholly or partially of a number graves. They therefore pointed out that they propose to apply to the High Court for directions in the matter.

On 24th January 1950 the representatives of the Hindu Burning Ground stated that they have received a letter from the Trustees of the Jumma Masjid and the Muslim Burial Ground and that they do not want any extended right of way as mentioned in the letter of the said Trustees but the restoration of the original right of way and that Government should take early action to restore the passage.

Local Self Government and Public Health Department

states that whatever the position about the ownership of the passage may be the passage is not Government land and it is doubtful whether the Collector can remove encroachment under section 36 of the Bombay City Land Revenue Act, 1876. H.M. wants to know whether the passage in question cannot be acquired under the provisions of the Land Acquisition Act, 1894.

2. The expression "public purpose" as defined by clause (f) of section 3 of the Land Acquisition Act, 1894, includes the provisions of village sites in districts in which the State Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such a provision. The definition is inclusive and there is no limitation regarding what is likely to prove useful to the public. The purpose should contemplate some public good wherein the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. Acquisition of land by the municipality for widening a street, the reclamation of unhealthy localities and any other measures likely to promote the public safety, health, convenience and education is a public purpose (cf. Shastri Ram Sharma Vs. Ahmedabad Municipality 34 Bom. 600). Construction of a road is a public purpose (cf. Province Vd. Secretary of State A.I.R. 1926 Mad. 1099). What is "a public purpose" or what is likely to prove useful to the public under the Land Acquisition Act, 1894 are matter left to the absolute discretion of Government and even if only a section of the public is benefited, it is a public purpose (1930 Mad. 798). Conversely a land which is used for the benefit of a section of the public cannot be acquired under the Land Acquisition Act on the ground that is needed for the benefit of a larger section of the public or of the public in general, for the Act does not provide for acquisition for enlarging the public purpose. The use of the land for cemetry or crematorium is a public purpose within the meaning of section 3(f) of the Act (cf. R.L.A.'s No. C. Lac. 7/30 dated the 26-4-30). The Muhammadan Cemetery managed by the Trustees of the Jumma Masjid is being used not only by Muhammedans but also by

SVV.
16.6.36.

the Hindus. It must therefore be deemed to be used for the benefit of the public. The question therefore would be whether the land used for the benefit of the public can be acquired under the Land Acquisition Act. In his opinions No. 19 dated 31-1-1940 and No. 83 dated 9-9-1949 the Advocate General, Bombay has expressed the view that when the land is already used for a public purpose, it cannot be acquired under the Land Acquisition Act for another public purpose. In view of this position it is doubtful whether any acquisition proceedings can at all be taken under the Land Acquisition Act.

3. There are special provisions regulating the compulsory acquisition of land for the purpose of cemeteries. Under the English law the privisions of the Public Health Act, 1875 as to the acquisition of land including those as to the compulsory acquisition of land, apply to the acquisition of land by a local authority for the purpose of a cemetery under the Act of 1879. There is a statutory provision to the effect that if the land has been consecrated or used for the burial of the dead it must not be sold or disposed of, or used for any purpose other than that of a cemetery; but this prohibition is to some extent over-ridden by later legislation. Again, consecrated land cannot be divested of its sacred character except by statute, and this doctrine operates to prevent the use of the land for purposes other than those for which a faculty can be obtained. There is also a statutory provision to the effect that unconsecrated ground which is maintained by a burial authority and set apart for burial must not be applied to any other purpose except by leave of the Minister of Health. Lastly, if the land has once been set aside for the purpose of interment, even though never actually used for that purpose, statutory provisions apply which in general prevent its being used for building either in the hands of local authority or their assignee. (See Halsbury's Laws of England Vol. III pp. 565-566). In the case of a consecrated ground, no tombstone or monument may be removed or its position changed, without a license or faculty from the bishop etc. (Ibid p. 596). As there is no property in a corpse, it cannot be the

subject of larceny; but it is a common law misdemenour to disinter a dead body without lawful authority, whether for the purpose of dissection or sale or other indignity, or even for a pious and laudable purpose. Faculties are frequently granted to authorise the removal of the remains of the dead from one consecrated place of burial to another. And in a proper case a faculty will even issue for the removal of a dead body from consecrated to unconsecrated ground (Ibid p. 612-613).

"The Court has jurisdiction by faculty to grant a strip of a closed churchyard for use as a foot-way so long as it shall be wanted for the purpose, with reversion to the church on ceasing to be so required, but no to grant the free hold of consecrated ground; St. Mary Abbotts (Vicar) v. Parishioners (1875), Trict. 17.

A petition was presented by a vicar and church wardens for a faculty authorising the appropriation of a strip of land forming part of the churchyard for the purpose of widening a road way. It was stated that no interments had been made within the part of the churchyard proposed to be so appropriated and that inconvenience was caused to persons attending the church from there being no pathway of that side of the highway adjacent to the churchyard, and that if the proposed widening were sanctioned, it should be possible to make such a pathway;- Held, by the Chancellor of the Diocese of Rochester declining to follow St. Botolph (Vicar) v. Parishioners (1892) p. 161 and following the dicta of Dr. Lushington in Hopper v. Forbes 5 Jr. (N.S) 875 and of Cockburn, C.J., in R.v. Twiss, L.R. 4 Q.B. 407, that there was no jurisdiction to sanction the appropriation of consecrated ground to any secular purpose : In re Plumstead Burial Ground (1895) P. 225.

In the following other cases faculties were granted for widening roads, etc., with consecrated ground: Hove St. Andrew's Vicar etc. v. Hown (1895) 1 P. 338, n; in re - St. Benet Sherehog, In re St. Nicholas Acons, (1893) p. 66 n; in re St. Nicholas Code Abbey in re St. Benet Fink, (1893) P. 58; St Nicholas, Leicester, Vicar, etc. vs. Langton (1899) P. 19."
(See Hudson on Compensation Vol. I pp. 82-83.).

4. In Amulya Chandra Banerji vs. Corpn. of Calcutta, 49 cal. 838, it was held by the Privy Council that provision for suitable accommodation of pilgrims crowding round about a temple is a public purpose. In Lachmeshwar Singh v. Chairman, Darbhanga Municipality, 18 Cal. 99 it was held that the municipality was justified in using theland for any purpose for which it was professedly taken, it having been taken for a bathing ghat, but afterwards in part, used for a market. Although themanagers of temples cannot under the Hindu Law alienate temple property acquisition of temple lands can be lawfully made under the Land Acquisition Act. In paragraph 101 of the Land Acquisition Manual, by Anderson the Acquiring Officer has been instructed to act tactfully when a question of acquiring land covered by churches, temples and mosques etc. comes up and is asked to

SVV

appease communal feelings by such concession in the matter of market value as is presented ordinarily by the the adoption of the principle of reinstatement rather than capitalisation of income. Reinstatement is appropriate in cases of public parks, schools, churches & (Halsbury's Law of England, Vol. VI, 46; vide e.g., in Hilcoat v. Archbishop of Cent, 10 C.B. 347). In the case of Secretary of State v. Shanmuganyar Mudaliar 16 Madras 369, Government had acquired under the Land Acquisition Act a plot of land containing granite quarries besides ancient temples and sculptures. Similarly in the case of the Chairman of the Howrah Municipality v. Khetra K. Mitter 33 Cal. 1290 a Hindu burning ghat within the limits of the Howrah Municipality was acquired for the purpose of the Bengal Nagpur Railway and the damage for shifting and reconstruction of a new ghat was awarded by the Collector. Similarly in his opinion No. C. Leg. 7/30, dated 26-6-1930 the R.L.A. has held that land could be acquired under this Act for cemetery or crematorium as it would be a public purpose. It is thus clear that although there are authorities on the point that land could be acquired for a burning ghat, or cemetery there no authorities on the point that land covered by graves can be acquired. Under the English Law Acquisition of grave yards is possible only when there is statutory provision to that effect and a license or faculty is granted by a bishop. As the point involved is an important one the Advocate General is requested to express his opinion in the case.

Sd./-
12/2
Additional Secretary to Government.

U.O.R. to Advocate General, Bombay, No. 2782;
dated the 13th February, 1951.

SVV

Office of the R.L.A.

Section 51 of the Land Acquisition Act, 1894, provides inter alia that no award made under the Act shall be chargeable with stamp duty, and no person claiming under any such award shall be liable to pay any fee for a copy of the same. The Collector of Nasik in his letter at page 1 ante has raised the question whether a person interested is entitled to a copy of the award in form ~~R.L.A.~~ RLA 5 (page 29 ante) or to a copy of the award as a whole including the reasons on which it is based. The Collector is inclined to the latter view. The Consulting Surgeyor to Government who was consulted by the Revenue Department has expressed the view that the "grounds" do not necessarily form part of the award. He considers that the copy of the award referred to in section 51 should be what is given in Form RLA 5 (page 29 ante); and that copying and comparing charges would be recoverable in respect of the certified copy of the award including the reasons for the award. The R.L.A. is requested to advise. The question boils down to whether the expression "award" in section 51 of the Act includes the grounds of award.

2. The expression "award" has not been defined in the Land Acquisition Act, 1894. But in the sections of the Act in which that word occurs it has been used with reference to compensation in some form or the other whether it be the amount of compensation or the disposal of compensation. Section 11 of the Act provides that after inquiring into the various objections the Collector shall make one award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation.

SVV

Sub-section (1) of section 12 requires the award to be filed in the Collector's Office. The award is final and conclusive in regard to the true area and value of the land and the apportionment of the compensation amongst the persons interested. Sub-section (2) provides that the Collector shall give immediate notice of his award to persons interested who were not present. These provisions indicate that the 'award' refers to the finding of the Collector in regard to the total area, total compensation and its apportionment. (Vide also page 102 of Land Acquisition by Om Prakash, Third Edition). This is also clear by a reference to the provision in section 19(1)(d) under which while forwarding a reference to the Court against an award the Collector has to state also the grounds on which the amount of compensation was determined. Incidentally it will also be seen from section 26 of the Act that the Act also makes a distinction in the 2 sub-sections of that section between the award of the Judge (under Part III of the Act) which shall be deemed to be a decree and the statement of the grounds of the award which shall be deemed to be a judgment within the meaning of the Civil Procedure Code. It appears, therefore, that the view expressed by the Consulting Surveyor to Government in his u.r. at page 20 ante is correct and the persons interested would be entitled to a free copy of the award only in the Form at page 29 ante.

Sd./-
31/7
Remembrancer of Legal Affairs.

U.R. to R.D., No. 12773; dated the 1st August, 1952.

SVV
18.6.56.
4 c.

L.D.R.L. No. 14824 dt. 25-7-1952.

S.A.S.

The Patel Co-operative Housing Society, Ltd., Mahudha, District Kaira was promoted and registered under the Bombay Co-operative Societies Act, 1925. It was registered on 23rd September, 1948. The Society then applied to the Collector of Kaira to acquire certain lands for the purposes of the Society. The Collector informed the Society to pay a deposit of Rs. 25444/- as the estimated market value of the lands. The Society wrote to the Collector stating that it will immediately pay up the amount to Government after the relevant notification for acquisition of lands under section 4(1) of the Land Acquisition Act, 1894, was issued. The relevant notification under section 4(1) of the Land Acquisition Act for acquisition of the lands for the Patel Co-operative Housing Society Ltd., Mahudha was issued by Government on 18th April 1951 and proceedings under section 5A of the Land Acquisition Act were taken by the Collector and submitted to Government. The draft agreement under section 41 of the said Act was also submitted to Government. The Chairman of the Society executed the agreement but he did not deposit the estimated cost of acquisition which comes to Rs. 25450/-. The Chairman insists that the Consulting Surveyor to Government should be requested to assess the value of the lands and after the lands were so assessed, the Society would deposit such amounts as may be assessed by the Consulting Surveyor to Government. The Collector referred the matter to Government, stating that as the Chairman did not deposit the estimated cost of acquisition proceedings under section 5A the draft notification under section 6A were not submitted to Government and further

SVV

requested that either the Chairman of the Society may be asked to deposit the amount or the proceedings may be ordered to be dropped. In R.D. Memo dated 2nd May 1952 the Collector was requested to inform the Chairman that if the Society did not comply with the conditions of the agreement and deposited the required amount the acquisition proceedings in this behalf would be dropped. With his letter No. LAQ 438 dated 12/14-7-1952 the Collector forwards a copy of reply received from the Chairman of the Society. The Chairman contends that under section 3(1)(e)(ii) of the Bombay Act IV of 1948, 15 per cent solatium for compulsory acquisition is not to be paid by the Society and as such he is prepared to pay Rs. 22,134/- as advance deposit for the acquisition of the lands for the said Society after deducting therefrom the sum of 15 per cent solatium from the estimated cost of Rs. 25,450/-. R.L.A. is requested to advise whether the contention of the Chairman is correct.

On the assumption that the society has undertaken the housing scheme with the previous sanction of Government the view taken by R.D. is correct.

Sd./- R.T.K.

Sd./-
30/8
Remembrancer of Legal Affairs.

U.R. to R.D., No. 14276; dated the 3rd September, 1952.

SVV
18.6.56.
4 c.

Office of the R.L.A.

Bom. Provincial Municipal Corporation Act, 1949, sub-sections 226 and 503.

Acquisition of Municipal land.

x Section 303 of the Bombay Provincial Municipal Corporations Act, 1949 has no application. Section 226 can be pressed into service if S. No. 1115 is a street land.

2. Under the Land Acquisition Act incorporeal rights cannot be acquired without the land to which such rights are attached and in respect of which such rights canbe enjoyed. (See R.L.A.'s opinion No. 11523, dated the 6th November 1939 which was confirmed in R.L.A.'s opinion No. 5697, dated the 19th June 1940). What is therefore necessary is to acquire S. No. 1114 which is the dominant heritage and to which the right to easement to overhang the structure (the Medal) is attached. The Acquisition of S.No. 1115 the servient tenement for the Ahmedabad Municipal Corporation which already vests in it, as now proposed would not be feasible and would also serve no purpose.

Sd./-
11/9
Remembrancer of Legal Affairs.

No.
U.R. to R.D./14898-A; dated the 12th September, 1952.

SVV
18.6.56.
4 c.

Office of the R.L.A.

Acquisition of lands in Trombay Island.

The Salsette Estates (Land Revenue Exemption Abolition) Act, 1951, does not provide for any machinery for settling disputes between Government and the estate holders as to whether or not any land would fall under section 4. If any dispute between the parties arises, it would be justiciable in a court of law and thereby there would be much delay in the acquisition proceedings. To solve this difficulty, it would be expedient to drop from the notification only such of the lands which undoubtedly fall under section 4 as such lands would not be required to be acquired. But if there are any lands about which there is some doubt as to their falling under section 4, with a view to avoiding waste of time in litigation and delay in acquisition of them if ultimately they are held to be not falling under section 4, it appears desirable to include them in the notification. In respect of such lands the notification should be modified and it should be clearly stated that only the interest of the estate holder, if any, in such lands is proposed to be acquired and such notification would be intra vires. (See the Government of Bombay versus Kauff Alli Salebhai 34 Bom. 618).

Sd./-
1/10
Remembrancer of Legal Affairs.

U.R. to R.D., No. 16156/A, dated the 1st October, 1952.

SVV
18.6.56.
4 c.

Office of the R.L.A.

Under section 11 of the Land Acquisition Act, 1894, the Collector has to inquire into the objections raised by the persons interested, into the value of the land and the respective interests of the persons claiming the compensations, and has to make an award of inter alia the apportionment of the said compensation among all the persons known or believed to be interested in the land. Under section 12(1) such award is final and conclusive evidence as between the Collector and the persons interested whether they have respectively appeared before the Collector or not, of the value of the lands and the apportionment of the compensation among the persons interested. It is not clear from the Collector's report how the claim of the Khot of Kole Kalyan was not considered at the time the Acquiring Officer made the award under section 11. The Collector states that the award has not only been declared but compensation has already been paid to the respective claimants (presumably the means persons who had taken the pieces of lands on lease from the Khot). The claim of the khot on account of the loss of assessment should in fact have been included in the total amount of compensation included in the award. It does not appear it whoud be open to the Acquiring Officer to make a supplementary Award in respect of the Khot's claim. It is not clear from the papers whether the Khot has put forth his claim before the Acquiring Officer or whether he has now asked for a reference to the Court under section 18. In the former case, the non-inclusion of this claim in the award would amount to the rejection of that claim and in the latter case it would be for the court to decide the amount of compensation on account of that claim. In order to enable the R.L.A. to express a definite opinion on the questions raised, the R.D. is requested to ascertain the exact circumstances in which the present questions have arisen.

Sd./-
Remembrancer of Legal Affairs.

R.R. to R.D., No. 13826; dated the 23rd August, 1952.

SVV
186.56.

Legal Department.

It appears from the report of the Collector, B. S. D. at page 173 ante that according to the usual practice separate awards had been declared in respect of each holding of the S.No. but the claim of the Khot for the loss of assessment in respect of all such separate holdings comprised in one project is considered separately and a separate general awards in respect of the claim of the Khot for the total loss of assessment on all the holdings is declared. In the present case, the Collector reports further that notices under section 9 of the Land Acquisition Act, 1894, had been served on the Manager of the Khot's Estate, who had also preferred his claim on account of the loss of assessment. It appears further from the extract of the General Notes on Reasons of the award (p. 177 ante) that it was intended to deal with the Khot's claim for the loss of assessment separately. In these circumstances there would appear to be no objection to the Land Acquisition Officer making a separately supplementary award in respect of the Khot's award. That might not amount to the reopening of the award already made. Incidentally it may be observed that this practice followed by the Collector is quite irregular.

2. The next question to be considered is whether in view of the coming into force of the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951, the Khot should be paid the capitalised value on account of the loss of future assessment when no such assessment could be recovered by him with effect from the current year. The Act was brought into force with effect from 1st March 1952. The notification under section 4 of the Land Acquisition Act, 1894, in this case was issued on 17th February 1950 (p. 37 ante), and notice under section 9 of the Act was served on 30th August 1951. A Claim amounting to

Rs. 513-4-6, equivalent to 50 times the loss of assessment collected per year was put forth on behalf of the Khot. The Salsette Estates (L.R.E.A.) Act, 1951, extinguished the right of the Khot to collect assessment from March 1950. Under section 23 of the Land Acquisition Act the Court has however to take into consideration the market value of the land at the date of publication of the notification under section 4, which date in this case is 17-2-1950. It does not therefore appear that the passing of the Act will affect the acquisition proceedings which were stated prior to its commencement.

Sd./-
9/10
Additional Secretary to Government.

U.R. to R.D., No. 16734/A; dated the 10th October, 1958.

SVV
18.6.56.
4 c.

Office of the R.J.A.

Land Acquisition Act, 1894.

Diversion of purpose.

The erection of residential flats is intended to provide a source of income for running the hostel and consequently the use of part of the land for erecting residential flats would be permissible even though the whole land was originally acquired for the hostel. If the construction of the flats can be done as a housing scheme, that itself will be a 'public purpose' in view of section 2(1) of the Land Acquisition (Bombay Amendment) Act, 1948 and in that case diversion to another public purpose different from the original purpose will furnish an additional reason in support of the proposed construction. Government may, therefore, give the necessary permission.

Sd./-
Remembrancer of Legal Affairs.

U.R. to R.D., No. 17857/A; dated the 28th October, 1952.

SVV
18.6.56.
4 c.

Legal Department.

Since the land xxx has already vested in Government under section 4(b) of the Selsette Estates (Land Revenue Exemption Abolition) Act, 1951, it can no longer be acquired under the Land Acquisition Act, 1894. All notification issued under that Act should be cancelled. The question of withdrawing from acquisition of the land under section 48(1) would not arise.

Sd./-
13/4
Additional Secretary to Government.

U.R. to R.D., No. 18970/E; dated the 14th November, 1952

SVV
18.6.56.

Legal Department.

The Land Requisition Act, 1894.

Payment of Compensation to Khot under supplementary award.

Under clause (1) of the agreement executed by the Standard Batteries Ltd. the Company shall pay to the Government the entire cost, as determined by the Government of the acquisition of the land, including all compensation, damages, costs charges, and other expenses whatsoever, which have been or may be paid or incurred in respect of or on account of such acquisition. The amount of compensation to be paid to the Khot under the supplementary award will have therefore to be recovered from the Company. This point was clear from the opinion in U.R. No. 16734/A, dated 10th October, 1958 in which it was stated that the market value of the land was to be assessed as at the date of the notification issued in 1950.

Sd./-
27/12
Additional Secretary to Government

U.R. to R.D., No. 21958/A; dated the 29th December, 1958.

SVP
18.6.86.
4 c.